



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF T-U- LLC

DATE: AUG. 27, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a record label, seeks to classify the Beneficiary as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Beneficiary had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief asserting that the Beneficiary fulfills at least three of the ten criteria.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate that a beneficiary has a one-time achievement (that is a major, internationally recognized award). Alternatively, a petitioner must provide documentation for an individual that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary’s occupation.

Where a beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

### A. Evidentiary Criteria

The Beneficiary serves in the position of creative director for the Petitioner in New York. Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Beneficiary met the leading or critical role and high salary criteria under 8 C.F.R. § 204.5(h)(3)(viii) and (ix), respectively. On appeal, the Petitioner maintains that the Beneficiary also meets the awards, membership, published material, judging, and original contributions criteria at 8 C.F.R. § 204.5(h)(3)(i)-(v). Upon review, we conclude that the record does not support a finding that the Beneficiary meets the requirements of at least three criteria.

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

In order to fulfill this criterion, the Petitioner must demonstrate that the Beneficiary’s prizes or awards are nationally or internationally recognized for excellence in the field of endeavor.<sup>1</sup> Relevant

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<sup>1</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions*;

considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.<sup>2</sup>

As evidence under this criterion, the Petitioner presented evidence that the Beneficiary and his coworkers received three Clio Awards for creativity in advertising or sports: gold in the “Experiential” category of the [redacted] medium (2014), bronze in the “Experiential” category of the [redacted] medium (2014), and silver in the “Commercials” category of the [redacted] medium (2016).<sup>3</sup> While the record includes information about the Clio Awards from its website and *Wikipedia*, and two articles in *Forbes* ([redacted] 2015 and [redacted] 2017) identifying multiple “Grand Clio” winners as those receiving “the biggest prize,” the Petitioner has not demonstrated that the Beneficiary’s aforementioned gold, silver, and bronze awards are nationally or internationally recognized prizes or awards for excellence in the field.<sup>4</sup>

In addition, the record indicates that the Beneficiary and his colleagues’ entries were named as a “finalist” in the [redacted] category at the 2014 Cannes Lions International Festival of Creativity, the [redacted] category at the 2014 New York Festivals International Advertising Competition, and the 2014 “Cannes Young Lions” film competition (Germany). With the appeal, the Petitioner provides coverage from Business-Standard.com ([redacted] 2017) and CBSnews.com ([redacted] 2018) describing Cannes Lions as “the Oscars of advertising,” but these articles do not discuss the [redacted] Lions” film competition, the Beneficiary’s creative work, or the significance of being recognized as a “finalist.” While the aforementioned competitions included participants from multiple nations, the record does not contain sufficient evidence to demonstrate that the Beneficiary’s standing as a “finalist” constitutes a nationally or internationally recognized *prize* or *award* for excellence in his field.<sup>5</sup>

Furthermore, the Beneficiary and his coworkers’ advertising projects received a prize for “distinction” in the [redacted] category at the 2014 Art Directors Club (Germany) competition for their [redacted] advertisement. This [redacted] advertisement was also selected for a Favorite Website Award (FWA) “of the day” by TheFWA.com and for “Site of the week” by Awwwards.com. Additionally, the record shows that the Beneficiary and two others shared a silver trophy at the 2011 Art Directors Club Junior Competition. Moreover, he was among hundreds of individuals who received an *Applied Arts* Student Award in 2011. Although the Petitioner provided screenshots and

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*Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Clio Awards include six recognition programs for creative businesses in “advertising, sports, fashion, music, entertainment, and health.” See <https://clios.com/about>, copy incorporated into the record of proceedings. For example, in 2014, the Clio Awards recognized 1,215 advertising entries, 199 sports entries, 174 fashion entries, 372 entertainment entries, and 126 health entries. In addition, the record indicates that multiple gold, silver, and bronze Clio awards are presented in each specific category.

<sup>4</sup> The coverage in *Forbes* may demonstrate that the small number of “Grand Clio” prizes are nationally recognized, but the Beneficiary was not a “Grand Clio” recipient. Rather, the Beneficiary was among thousands who annually receive a gold, silver, or bronze Clio award.

<sup>5</sup> The issue here is not the national or international scope of the Beneficiary’s competitions, but rather whether his specific awards are “nationally or internationally recognized prizes or awards for excellence in the field.”

other information from the competitions' organizers regarding these awards, it did not offer sufficient evidence of their national or international recognition for excellence in the field. For instance, the screenshot from *Applied Arts* claimed that "[t]he student winners chosen by our judges are definitely up-and-comers worth keeping an eye out for," but such information is insufficient to demonstrate that the aforementioned award is a nationally or internationally recognized prize or award for excellence in the field. The Petitioner has not established therefore that the Beneficiary meets this regulatory criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*  
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner argues that the Beneficiary meets this criterion based on membership with the XH Collective (XHC) and the One Club for Art and Copy (OCAC). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.<sup>6</sup> The record reflects that the Petitioner submitted letters from XHC and OCAC identifying the Beneficiary as a member and screenshots from the associations' websites. Although the screenshots relate to the background and history of XHC and OCAC, the Petitioner did not provide their membership requirements, so as to demonstrate that they require outstanding achievements, as judged by recognized national or international experts in the field consistent with the regulation at C.F.R. § 204.5(h)(3)(ii). As such, the Petitioner did not establish that the Beneficiary fulfills this criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The record contains various screenshots that mention [REDACTED], a portfolio site created by the Beneficiary and [REDACTED] to promote their work. These screenshots from Creativity-online.com, AdWeek.com, AdRants.com, MediaBistro.com, BusinessInsider.com, www.ddb.fr, and www.page-online.de did not include a full copy of the articles discussing the Beneficiary's work. Moreover, the authors of the aforementioned material were not identified, nor has the Petitioner presented comparative statistics or other evidence indicating that these websites' readership elevates them to major media relative to other publications.

In addition, the Petitioner presented screenshots about branding, marketing, and design projects for various companies, organizations, and products, such as the National Basketball Association (NBA),

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<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

Vodafone, Mercedes Benz, and Riot Raki, rather than published material about the Beneficiary.<sup>7</sup> Articles that are not about a beneficiary do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).<sup>8</sup> In fact, many of these screenshots never mention the Beneficiary, let alone reflect published material about him. Finally, the record does not show that any of the remaining articles submitted for this criterion were about the Beneficiary, appeared in major media, or identified an author. For the above reasons, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

For this criterion, the Petitioner submitted an August 2014 letter from the office manager for “Miami Ad School Europe in [redacted]” Germany, stating in full: “Herewith confirm that [the Beneficiary] hold [sic] several lectures at Miami Ad School Europe and judged as well the quarterly exhibitions.” In addition, the record includes an undated letter from [redacted] cofounder of [redacted] in [redacted] Russia, asserting that she is “teaching the creative talents of Russia at MADS School.”<sup>9</sup> [redacted] indicated that in her position at MADS School, she “founded the MADS Award that honors the best work among the young talents. To do that I gather the best creatives in our industry and judge their work on a yearly routine. On this regard I confirm that [the Beneficiary] has judged the MADS award in 2013.”<sup>10</sup>

The aforementioned letters, however, did not discuss whose work the Beneficiary judged or the specific projects he evaluated. Furthermore, the Petitioner did not offer information about the MADS School, its academic programs, or the area of focus for the MADS Award program. Without sufficient information and evidence demonstrating that the Beneficiary’s activities with MADS School and Miami Ad School Europe constituted his participation, either individually or on a panel, as a judge of the work of others in the field, the Petitioner has not established that the Beneficiary meets this criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

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<sup>7</sup> We acknowledge that several of the news outlets covering these projects are major media (such as *USA Today* and *Daily Mail*), but their material was not about the Beneficiary.

<sup>8</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (finding that the published material should be about the Beneficiary relating to his work in the field, not just about his or her employer or another organization with whom he or she is associated).

<sup>9</sup> Her letterhead, however, is not from the MADS School.

<sup>10</sup> The record also contains a letter prepared by [redacted], an associate professor at the School of the Art Institute of [redacted] offering “an independent evaluation of the professional credentials” of the Beneficiary. He contends that the Beneficiary was selected to serve as a judge for Miami Ad School Europe quarterly exhibitions and the MADS Awards, but does identify the particular evidence upon which his conclusions are based.

In order to meet this criterion, a petitioner must establish that the beneficiary has made original contributions of major significance in the field.<sup>11</sup> For example, a petitioner may show that a beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, we will address the Petitioner's arguments on appeal and determine whether the Beneficiary has demonstrated original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner contends that the Beneficiary's [ ] campaign for the NBA, [ ] campaign for Vodafone, [ ] campaign for Mercedes Benz, [ ] initiative, [ ] artificial intelligence art project, and [ ] data marketplace project represent artistic contributions of major significance in his field.<sup>12</sup> In support of this claim, the Petitioner points to awards that these campaigns received, media coverage relating to the Beneficiary's advertising projects, and letters of support from others in the field discussing his work.

With respect to awards received by creative projects undertaken by the Beneficiary and his colleagues, the Petitioner has not shown that these awards reflect that his advertising work has risen to the level of major significance in the field consistent with this regulatory criterion. As discussed under the awards criterion, the Petitioner did not establish the national or international recognition or significance of the Beneficiary's awards in the field. Moreover, the Petitioner has not shown, for example, the substantial impact the Beneficiary's advertisements and digital media work have had in the greater field or explained how they are otherwise majorly significant in the creative direction field.

Regarding media coverage of the Beneficiary and his colleagues' advertising projects, the Petitioner provided various articles describing the NBA [ ], Vodafone [ ], and Mercedes Benz [ ] commercials. The Petitioner, however, has not shown that the Beneficiary's creative direction work on these projects has received attention from the press in a manner indicative of major significance in the field. For example, a [ ] 2016 article in *USA Today* discussed how the NBA released a new commercial to promote its Saturday night games. This article did not mention the Beneficiary or discuss how his specific work on that commercial represents an original contribution of major significance in the field of creative direction. Likewise, the record includes a [ ] 2016 article from ShootOnline.com entitled "Top Spot of the Week: NBA's [ ] Directed by [ ] [ ] While this article has a "credits" section that listed the Beneficiary among more than 25 other contributing staff, it did not speak to his particular art direction work or explain its major significance in the field. The record contains additional articles showing that the Beneficiary's advertising and promotional projects have garnered media attention, but these articles did not demonstrate that his original work has widely influenced others in the advertising industry or otherwise constitutes contributions of major significance in the creative direction field.

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<sup>11</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

<sup>12</sup> While the Beneficiary worked on these advertising campaigns, we note that many other staff also contributed to these projects. For example, 13 other employees from the Petitioner shared the NBA [ ] campaign Clio Sports silver award with the Beneficiary in 2016.

As further evidence under this criterion, the Petitioner asserts that letters written on the Beneficiary's behalf affirm "the significance and originality of his work." Although these letters confirmed his work on advertising projects and praised his talents and abilities, they did not explain or indicate how his creative work rises to the level of original contributions of major significance in the field.<sup>13</sup> For instance, [ ] executive creative director for [ ] a digital creative agency, noted that he tutored the Beneficiary "in his final quarter at Miami Ad School in [ ] He further stated: "I vouch for his superb skills in art direction and conceptual thinking. I'm following his work ever since and love his personal work as well as his well thought campaigns for big brands such as Mercedes Benz or Vodafone." While [ ] mentioned the Beneficiary's advertising projects for clients such as Mercedes Benz and Vodafone, he did not provide specific examples of how the Beneficiary's work on their campaigns has widely affected the industry or has otherwise risen to the level of contributions of major significance in the creative direction field.

In addition, [ ] managing director of [ ] a German communication agency, asserted that the Beneficiary's "ability to craft storytelling is uniquely persuasive and effective. His use of digital media in his campaigns is exquisite and always well crafted. Moreover, he is incredibly adept at the difficult task of cross-culture advertising." Here, [ ] did not articulate the significance of the Beneficiary's work in the greater field. Further, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Beneficiary has already used those skills and abilities to impact the field at a significant level, which has not been shown.

Furthermore, with regard to the Beneficiary's [ ] project, [ ] managing director of [ ] an advertising agency, stated that the Beneficiary and his partner in the YQP Collective experimented with the concept of using data as a modern-day currency. [ ] explained that "they convinced the shop-owner of an exclusive high-fashion boutique in [ ] to let them do a pop-up in his premium foot-trafficked shop. They created the first supermarket in the world where customers paid for groceries with [ ] data. It was called [ ] While this project garnered media attention for its novelty, the record does not show that [ ] expanded to other stores in Germany or elsewhere, or otherwise had a meaningful impact to the overall field.

With respect to the Beneficiary's [ ] initiative and [ ] artificial intelligence art project, the remaining letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate that his work on these projects has been considered to be of major significance in the field of creative direction. The language of this regulatory criterion requires that the Beneficiary's original contributions be "of major significance in the field" rather than mainly affecting his employers or clients. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). Without sufficient evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established that the Beneficiary meets this criterion.

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<sup>13</sup> While we discuss a sampling of letters, we have reviewed and considered each one.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Director found that that the Petitioner had demonstrated the Beneficiary's eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that the Beneficiary meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner contends that the Beneficiary has performed in a leading or critical role for its organization, [REDACTED] and TEDxMunster. As it relates to a leading role, the evidence must establish that a beneficiary is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>14</sup> Regarding a critical role, the evidence must demonstrate that a beneficiary has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a beneficiary's role, but rather the performance in the role that determines whether the role is or was critical.<sup>15</sup>

While the record includes letters of support from the above organizations discussing the Beneficiary's work, these letters do not establish that he held a leading position, nor do they contain specific information signifying his essential roles to the organizations.<sup>16</sup> For instance, [REDACTED] TEDxMunster licensee and co-organizer, stated: "We hereby confirm the participation of [REDACTED] [REDACTED], [the Beneficiary], and [REDACTED] on stage at TEDxMunster [REDACTED] [REDACTED] on [REDACTED] 2014 with their TEDx Talk [REDACTED]"<sup>17</sup> [REDACTED] statement, however, did not discuss how the Beneficiary's role was leading or critical or critical for TEDxMunster.

In addition, [REDACTED] the Petitioner's chief operating officer, stated that in his position as creative director, the Beneficiary "is responsible for overseeing integrated advertising campaigns from conception to completion. This requires him to make critical decisions about the content, tone, and voice of brand messaging for our artists across multiple mediums . . . ." While [REDACTED] indicated that the Beneficiary has oversight responsibilities for certain advertising campaigns, he did not explain how the Beneficiary's role is leading or critical to the company overall.

Furthermore, [REDACTED] chief executive officer, [REDACTED] [REDACTED] asserted that he met the Beneficiary "in 2010 when he interned at [REDACTED] [REDACTED]" and that the Beneficiary "stood out from the other interns in terms of motivation and skill." [REDACTED] further noted that the Beneficiary "worked on brands such as Ariel and successfully helped pitch for clients such as the Coca Cola owned energy drink [REDACTED]" but the record does not show that the Beneficiary's intern position was leading or critical for [REDACTED]

<sup>14</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (stating that letters from individuals with personal knowledge of the significance of a beneficiary's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

<sup>17</sup> [REDACTED]'s letter explains that "TEDx is a program of local, self-organized events that bring people together to share a TED-like experience." "TED talks" focus on "Technology, Entertainment and Design."



Moreover, [ ] former creative director at [ ], stated: “[The Beneficiary] worked in my team on the international Mercedes Benz [ ] account – mostly on [ ] and [ ] campaigns. I worked closely with him and his creative partner [ ] and supervised his development.” [ ] further indicated that the Beneficiary “constantly tried to push the boundaries of Mercedes Benz brand communication” while working on that account, but his statements are not sufficient to show that the Beneficiary’s role was leading or critical role for [ ] overall.

Although the aforementioned letters confirmed the Beneficiary’s employment and discussed his work on various projects, they did not contain detailed, probative information demonstrating the specific nature and outcomes of his roles with the respective businesses. Furthermore, the remaining letters discussing the Beneficiary’s work for [ ] and [ ] did not explain how his positions were leading compared to the other creative staff working for those organizations, nor did they indicate that the Beneficiary’s creative roles were of significant importance for the companies’ success or standing in the industry so as to demonstrate a critical role.

Finally, this regulatory criterion also requires that a beneficiary perform in a role for organizations or establishments that have a distinguished reputation.<sup>18</sup> While the record contains company information from the websites of the Petitioner’s sister company, [ ] [ ] [ ] and [ ] this self-promotional documentation is not sufficient to demonstrate that these organizations have a distinguished reputation. Moreover, as discussed under the awards criterion, although the Petitioner presented evidence of the Beneficiary’s companies’ receipt of various awards, he did not sufficiently demonstrate their significance or relevance. Here, the Petitioner did not submit sufficient evidence portraying the aforementioned organizations’ standing in the field.

For the above reasons, the Petitioner did not demonstrate that the Beneficiary meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

Although the Director found that the Petitioner also meets this criterion, the record does not support that conclusion. Therefore, for the reasons discussed below, the Director’s determination on this issue will be withdrawn.

The Petitioner presented a July 2017 letter stating that the Beneficiary’s “annual base salary is \$150,000” and pay statements reflecting his earnings in [ ]. In addition, the record includes a screenshot from Salary.com showing that the median salary for creative director is \$116,137.<sup>19</sup> The Petitioner, however, must submit evidence showing that the Beneficiary has earned a high salary or other significantly high remuneration relative to others in his field and not just a salary that falls in the top half of his field. Without information comparing the Beneficiary’s earnings to

<sup>18</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10-11 (defining *Merriam-Webster’s Dictionary* definition of “distinguished” as marked by eminence, distinction, or excellence).

<sup>19</sup> This screenshot, however, did not identify the geographic region from where this salary information was collected.

high salaries of creative directors in the [ ] metropolitan area, the Petitioner has not established that the Beneficiary meets this criterion.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

### III. CONCLUSION

The Beneficiary is not eligible because the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Beneficiary has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r. 1994). Here, the Petitioner has not shown that the significance and recognition of the Beneficiary’s work are indicative of the required sustained national or international acclaim or that they are consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the foregoing reasons, the Petitioner has not shown that the Beneficiary qualifies for classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought.

*Matter of T-U- LLC*

Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of T-U- LLC*, ID# 3818208 (AAO Aug. 27, 2019)